

# UTILITY CONSUMER PARTICIPATION BOARD

August 4, 2008

## MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, August 4, 2008 in the Ottawa Building, 4<sup>th</sup> Floor Training Room, Lansing, Michigan.

### I. Call to Order

Chairman Alexander Isaac (participating via conference call) asked Mr. Shulman if he would serve as Acting Chairman for the meeting. Mr. Shulman called the meeting to order at 10:20 a.m. Board members present: Ron Rose, Marc Shulman, Sister Monica Kostielney, Harry Trebing and Alexander Isaac (via telephone conference). Members absent: None. Other appearances: Michelle Wilsey, LeAnn Droste, Donald Keskey, David Shaltz, Tim Fischer, John Liskey, and Marilyn Oliver.

### II. Agenda

**Rose moved, second by Kostielney and motion carried to approve agenda with the addition of the following items under Correspondences:**

- i. MEC/PIRGIM, MCAAA request for budget revisions or transfers date 8\_1\_08 (Keskey)
- j. MEC/PIRGIM, MCAAA case status report dated 8\_1\_08 (Keskey)
- k. MEC/PIRGIM Case Budget Transfer Requests – Grant UCRF 08-01 (Keskey)
- l. MCAAA Case Budget Transfer Requests – Grant UCRF 08-03 (Keskey)

### III. Public Comment

Participants at the meeting were invited to introduce themselves. There was no other public comment.

### IV. Minutes

**Rose moved, second by Kostielney and motion carried to approve the minutes of June 2, 2008 with verification that Isaac's name is spelled correctly throughout the document.**

### V. Correspondences

The following correspondences were received and placed on file:

- a. MEC/PIRGIM 2007 Annual Report Submission 7\_18\_2008 (Keskey)
- b. Nuclear legacy case filing--CECO case U-15611 Memo (Keskey)
- c. Droste response to Nuclear legacy case filing--CECO case U-15611 Memo (Droste)
- d. 2008 Utility Consumer Representation Fund Financial Report As of 7/29/08 (Eklund)
- e. AARP Case Status Report 7\_31\_2008 (Joy/Nelson)
- f. AARP 2009 Grant Cycle Memo (Joy/Nelson)
- g. UCPB Transcripts 6\_2\_08
- h. Major Actions Summary 6\_2\_2008 (Wilsey)
- i. MEC/PIRGIM, MCAAA request for budget revisions or transfers date 8\_1\_08 (Keskey)
- j. MEC/PIRGIM, MCAAA case status report dated 8\_1\_08 (Keskey)
- k. MEC/PIRGIM Case Budget Transfer Requests – Grant UCRF 08-01 (Keskey)
- l. MCAAA Case Budget Transfer Requests – Grant UCRF 08-03 (Keskey)

### VI. Old Business

a. 2007 Annual Report - The 2007 UCPB Annual Report was referred to the Board and public for review and comment. Wilsey requested Annual Report information from the AG's office. Approval of the Annual Report will be taken up at the August 25, 2008 special meeting.

b. 2009 UCRF Grant Cycle – Wilsey reported that the 2009 UCRF grant cycle was in progress. The deadline for submissions is August 8, 2008. A special meeting is scheduled August 25, 2008, 10:00 a.m., for the purpose of review of grant submissions.

## **VII. New Business**

a. **MEC/PIRGIM, MCAA Requests for Budget Revisions or Transfers** – Keskey noted that the budget amendments that were approved at the last meeting (June 2, 2008) exceeded \$25,000 and therefore required approval of the State Administrative Board to be effective. LeAnn Droste explained that these had been overlooked and therefore not submitted to the Administrative Board for approval. Keskey proposed an alternative “bridge” approach that would allow funds to be available for immediate use. He proposed keeping the approved budget addition of \$15,150 for Case DECo Case U-15244 but instead of the \$20,000 addition to the budget for Case U-13919 Appeal – he proposed transfer of surplus funds from other approved cases to fund the case. He noted that they were also seeking to transfer additional funds (in addition to the previously approved increase of \$15,150) to the U-15244 from other case budgets. He explained that the reason additional funds are needed is because the case is rapidly going to hearing and it appears it will be a full bore hearing without settlement. This transfer realigns the case funds in accordance with what's happening. Shulman noted that most of the board did not have time to review the memo as it had been sent via email just prior to the meeting. Rose requested that Keskey go through each of the cases for the board. He asked Keskey to explain on a priority basis which cases are the most important, the mechanics of what he's asking the board to do, including when he expects the funds to be effective if a transfer is approved. Rose reviewed the financials provided by DLEG and additional information on budget amendments provided by Wilsey. Wilsey asked Keskey if the transfer was a substitute for the \$20,000 increase approved June 2, 2008. Keskey replied that was correct. Rose clarified that while approved by the board (and funds were available), if the total increase exceeded \$25,000 the Administrative Board approval was required. Droste stated that was correct. She explained that since Keskey is able to transfer already encumbered funds for the \$20,000, the only increase was \$15,150. That amount was below the \$25,000 threshold and therefore, did not require Administrative Board approval to be effective. Keskey explained further that the only amount of the increase over the grant, the way he structured these transfers, is the \$15,150, allowing the grant approval on June 2<sup>nd</sup> to be immediately effective as of that date because it's under the 25,000. Everything else, any other increases to any budget, including the 20,000, is effected by transfers. If they are effective today, work can proceed undisrupted. He noted that the reason funds can be transferred from some of these dockets, whether it be legal, expert or both, to make up for the funds that we need now is because we're later in the year, some of these cases are more advanced or they're finished, we have greater clarity on where there may be funds remaining that can now be utilized for the cases that are happening full bore at this time. So without hurting any case, these transfers could use the money efficiently to not disrupt ongoing work. Rose asked if these transfers could occur because the grant would close out September 30<sup>th</sup>. Keskey noted that many of the cases would be on-going but that will be addressed as part of the new grant application. Rose asked if there would be a need between now and the end of September for additional funds. Keskey stated he was proposing a “global solution.” Unforeseen events could result in a request at the August 25, 2008 meeting but this would greatly reduce the possibility. Shulman suggested the board take up each request separately, since they involved both substitute transfers and new increases. Keskey noted the new increase is only an increase in the budget for that particular case from transfer from other cases in the grant. No new funds over that already approved in the grant were being requested. Wilsey again clarified that the \$20,000 increase approved June 2, 2008 was being replaced by \$20,000 in transfers from existing funds. Keskey and Droste confirmed that was correct. Trebing asked if nuclear issues were a subject of the DECo case for which Keskey was requesting additional funds. Keskey replied that nuclear issues were a subject of CECo cases he was working on under the grant. Trebing asked if they were addressing the pricing charged to Michigan Ratepayers for low cost nuclear operating units. Units are reportedly operating at high capacity factors (97%+) with low base price (13/MWh). Bulk power market pricing requires the price be set at the cost of the last marginal supplier. That high rate is then applied to the nuclear unit – creating a huge pricing differential (and high profits). Keskey noted that the AG pursued these issues in U-14992. They supported their position but the sale was approved. He expressed concern that Michigan ratepayers are paying \$43-\$53 / MWh under the PPA. That will harm ratepayers if Entergy closes the plant after the 15 year PPA or does not renew the PPA. Trebing asked if those issues are addressed at all in his proposed work or existing cases. Keskey said the sale was approved already but there are still proceeds issues. That is what their work primarily focuses on. Trebing reiterated that he was hopeful that the Michigan consumer that's already paid for the nuclear unit has the ability to garner

the benefit of \$13/mwh power and a 97-percent capacity factor. Liskey noted that the \$255 million refund ordered by the Commission in the Consumers Palisades case should be appearing in customer bills now. An additional \$109 million in decommissioning proceeds are in dispute now. Shulman thanked Don for the explanation of issues. There was discussion of taking the Keskey proposal, which included the substitute transfer of \$20,000 in existing funds for the previously approved increase, and additional increases in the case budget from other transfers, up as separate motions. He requested a motion on the \$20,000 transfer request substituting for the previously approved increase. **Kostielney moved, second by Rose and motion carried to approve a transfer of \$20,000 from existing case budgets in UCRF 08-01 to Cases U-13919.** The additional request for \$28,085 increase in the case budget from transfers from other cases was discussed. Keskey explained that the request was to increase the case budget in the DECo rate case U-15244 by \$19,680 and \$8,585 for the I&M (U-13919) Appeal all from transfers from existing cases. No new funds were being requested. Keskey noted that the request for \$8,500 in legal (plus \$85 admin) was for the time required to do the cert. petition and appendix. Shulman asked if the increase was for work that was completed? Keskey said no, it was for work they would do in the next three weeks of August. Shulman asked for separate motions on the request for U-15244 and Appeal of U-13919. **Rose moved, second by Kostielney and motion carried to approve transfer of \$19,680.38 from existing case budgets in UCRF 08-01 to case U-15244.** Wilsey asked if the request for \$8585 was an increase of funds or a increase for the grant or an increase to the case budget transferred from other cases in the grant. Keskey said it was requesting a transfer of existing funds to this case. Shulman asked if any of the cases would be jeopardized by reducing the funds for intervention. Keskey responded that he carefully reviewed the cases before recommending the transfer and that no position or case would be jeopardized. Keskey reviewed the status of each case from which he was transferring funds. Shulman asked Keskey if he was confident that if this transfer was approved, that there would be no need to come back to the board and ask for additional money for these ten cases where you're taking money out of now and transferring in this grant cycle? Keskey responded yes. He reserved funds wherever he felt there was or potentially would be a need. Wilsey complimented Keskey on his clear and concise presentation and case status report. Isaac concurred and suggested that another column containing the requested transfer be incorporated with the case status report. Rose commended the effort noting that the reporting had improved substantially with this effort as demonstrated by the earliness of the hour. **Rose moved, second by Kostielney and motion carried to approve transfer of \$8,585 from existing case budgets in UCRF 08-01 to case U-13919 appeal. Specific transfer amounts are subject to confirmation of availability of funds by DLEG.**

Keskey presented his next request for approval of transfer of \$40,400 from existing cases to U-15506 as a substitute for the increase in the same amount approved at the June 2, 2008 meeting. He again wanted to avoid unnecessary delay and expedite the effective date. Keskey reviewed the status of each of the cases for which the budgets were being reduced. He also reiterated the purpose of his participation in the new cases. Droste noted some discrepancies between the remaining dollars that Keskey was proposing to transfer and the amount the financial report indicates is remaining. Droste and Keskey would settle the details of remaining balances and transfers. Wilsey asked Shultz if he was involved in any of the cases included in Keskey's proposal. He indicated that they were involved in the GCR plan cases of Consumers Energy, 15454, and the MichCon Case U-15451, we do have active issues in those cases. Wilsey asked about 15041-R and 15042-R and U-15628, the new MichCon filing. Shultz replied that U-15628 will be addressed in their upcoming grant application to the board this Friday. He further noted that U-5041 and U-15042 are part of our existing grant agreement with the board. Wilsey asked Keskey if his client's issues in these cases were distinct from issues RRC is pursuing. Keskey noted they were generally separate. If the issues are similar, they would pursue a complementary strategy. Trebing asked about their position and thoughts on decoupling. He noted that consumers should be protected from a guaranteed rate of return regardless of sales. If there is a guarantee then you could reduce the rate of return to the company, in other words, you simply cut the return; you're guaranteeing your return, therefore there's less risk, they earn less. Shultz noted that both the staff and the company supported the decoupling proposal in the SEMCO case. The issue was ultimately dropped from the case but he does expect to see it come up again. Liskey noted that the attorney general was opposed to decoupling as well. He suggested that in the board's review of the next grant cycle the board should ask grantee applicants to identify issues like decoupling that from historical practice may be in opposition to the position the attorney general is taking. His concern was that the statute implies that the AG and grantees are working

together. He recognized that two lawyers can't take a different position and still work together, but he noted the board needs to be fully apprised where the attorney general is fighting a UCRF funded grantee on an issue. He reminded the board the AG questioned whether nuclear decommissioning is an appropriate Act 304 issue. He is not suggesting how the board should act but felt the board should be fully informed as to any issues of conflict or concern. Shulman called the question on the MCAAA transfer request. **Rose moved, second by Kostielney and motion carried to approve a transfer of \$40,400 from existing case budgets in UCRF 08-03 to case U-15506. Rose moved, second by Kostielney and motion carried to add cases and to establish corresponding budgets from transfers from existing cases in UCRF 08-03 to U-15041-R (\$4,040 – \$2,000 legal, \$2,000 expert, \$40 admin), U-15042-R (\$4,040 – \$2,000 legal, \$2,000 expert, \$40 admin) and U-15628 (\$20,200 - \$10,000 legal, 410,000 expert, \$200 admin).**

### **VIII. Next Meeting**

Shulman noted that a special meeting is scheduled August 25, 2008 10:00 a.m., Ottawa Building, 4<sup>th</sup> Floor Training Room and the next regular meeting is scheduled Monday, October 1, 2008.

### **IX. Adjournment**

Rose commented on the significant interpretation of APA law achieved by Keskey in the recent case addressing contested and uncontested cases. He also asked about the lack of billing on the AARP grant that was scheduled to expire September 30, 2008. Kostielney added that she was very concerned about the memo from Nelson terminating AARP involvement in the UCRF grant program. Wilsey commented that AARP had provided a case status report indicating that they had received a proposed final decision adverse to their case. The ALJ found the issues they were pursuing were not admissible under Act 304. The memo simply states that they're not going to apply in the upcoming grant cycle. It does not indicate a cessation entirely, but they do highlight the fact that other forums, particularly in light of the proposed legislation, provide a opportunity to pursue issues most important to them more effectively. In the annual report, encroachment of the legislation and other regulatory changes on Act 304 is highlighted as a critical issue facing the program that requires urgent attention. In speaking with potential grantees, the narrow scope of the program is frequently cited as a problem or obstacle to their participation. The most relevant issues for many consumer organizations seem to be outside the scope of Act 304. Wilsey will follow-up with Nelson to gain additional perspective on their position. Isaac raised concern over the delay in receiving the minutes. The transcripts were not completed due to extenuating circumstances related to the court reporter. Regardless, he emphasized that the minutes should be provided within two weeks of the meeting.

The meeting adjourned at 12:07 p.m.

*Note: Complete transcripts of this meeting are available upon request.*